

**1989 No. 29****CRIMINAL PROCEDURE, NORTHERN IRELAND****The Criminal Appeal (Reviews of Sentencing)  
(Northern Ireland) Rules 1989***Made . . . . . 3rd February 1989**Coming into operation . . . . . 1st March 1989**To be laid before Parliament*

We, the Northern Ireland Supreme Court Rules Committee, being the authority for the time being having power under section 55 of the Judicature (Northern Ireland) Act 1978(a) and paragraph 3 of Schedule 3 to the Criminal Justice Act 1988(b) to make, amend or revoke rules regulating the pleading, practice and procedure of the Supreme Court of Judicature of Northern Ireland, hereby, with the concurrence of the Lord Chancellor, exercise these powers and all other powers enabling us in that behalf as follows:—

*Citation and commencement*

1. These Rules may be cited as the Criminal Appeal (Reviews of Sentencing) (Northern Ireland) Rules 1989 and shall come into operation on 1st March 1989.

*Interpretation*

2.—(1) In these Rules—

“the Act” means the Criminal Justice Act 1988;

“the Attorney General” means the Attorney General for Northern Ireland;

“application” means an application by the Attorney General to the Court for leave to make a reference;

“the Court” means the Court of Appeal;

“reference” means a reference under section 36 of the Act by the Attorney General of a case to the Court to review the sentencing of a person (in these Rules called “the offender”) in a proceeding in the Crown Court;

“the Master” means the Master (Queen’s Bench and Appeals).

(2) The Interpretation Act 1978(c) applies to the interpretation of these rules as it applies to an Act of Parliament.

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(a) 1978 c. 23  
(b) 1988 c. 33  
(c) 1978 c. 30

*Applications*

3.—(1) Every application shall be in writing and shall—

(a) specify:

- (i) the name of the offender;
- (ii) the date on which, and the offence of which, he was convicted;
- (iii) the sentence passed on him in respect of that offence;
- (iv) the date on which the sentence was passed (if later than the date mentioned in (ii) above); and
- (v) the judge by whom, and the location of the Crown court at which, the sentence was passed;

(b) state the reason why it appears to the Attorney General that the sentencing of the offender was unduly lenient.

(2) An application shall be entitled “Reference under section 36 of the Criminal Justice Act 1988” together with the year and number of the application and the name of the offender.

*Notice of application*

4. The service of the application on the Master shall constitute the giving of notice of the application for the purpose of paragraph 1 of Schedule 3 to the Act (notice to be given within 28 days of passing of sentence).

*Master’s notice to offender*

5.—(1) The Master shall, as soon as practicable after receiving the application, cause to be served on the offender a copy of the application together with a notice which—

- (a) informs him that the result of any reference could be that the Court would quash the sentence passed on him in the proceeding and in place of it pass such sentence as was thought appropriate for the case and as the court below had power to pass when dealing with him, including a greater punishment,
- (b) informs him of the effect of paragraphs 6 (entitlement of offender to be present at hearing of reference, although he may be in custody), 7 (offender in custody requires leave of Court to be present at hearing of application), 8 (power of Court to pass sentence on offender who is not present) and 11 (entitlement of offender to reasonable costs) of Schedule 3 to the Act;
- (c) invites him, within such period as the Master may specify (being not less than 14 days from the date of service on him of the notice), to serve notice on the Master if he wishes—
  - (i) to apply to the Court for leave to be present under paragraph 7 of Schedule 3 to the Act;
  - (ii) to present any argument to the Court on the hearing of the application or, if leave is given, of the reference, and whether to present it in person or by counsel on his behalf;
- (d) draws to his attention the effect of rule 9 below (supply of documentary and other exhibits); and

(e) advises him to consult a solicitor as to his position as soon as possible.

(2) The Court shall not hear argument by or on behalf of the Attorney General until the period specified by the Master has expired unless the offender agrees or has indicated that he does not wish to present any argument to the Court.

### *References*

6.—(1) Every reference shall be in writing and shall—

(a) contain the information required by paragraph (a) of rule 3(1) above to be specified in an application;

(b) summarise the arguments intended to be put to the Court; and

(c) specify the authorities intended to be cited.

(2) The reference shall bear the same title as the application.

(3) Subject to paragraph (4) below, the reference shall be sent on behalf of the Attorney General to the Master, who shall cause a copy of it to be served on the offender.

(4) Where leave is given for a case to be referred to the court and the document comprising the application also contains the material required by paragraph (1) above to be contained in a reference, the Court may order that the document be treated for the purpose of these Rules as the reference; and in that case paragraph (3) above shall not apply.

### *Withdrawal or amendment of application or reference*

7. The Attorney General may withdraw or amend an application or reference at any time before the hearing of the application or reference as the case may be, has begun, or, after that, and until a decision has been given, may withdraw or amend the application or reference by leave of the court, and notice of such withdrawal or amendment shall be served on the Master and the offender on behalf of the Attorney General.

### *Master's power to require information from court of trial*

8. The Master may require the court of trial to furnish the Court with any assistance or information which may be required for the purpose of exercising the jurisdiction of the court.

### *Supply of documentary and other exhibits*

9.—(1) The Master shall, on request, supply to the offender copies or reproductions of documents or other things required for the application or reference and in such case may make charges in accordance with scales and rates fixed from time to time by the Treasury.

(2) The Master shall, on request, make arrangements for the offender to inspect any document or other thing required for the application or reference.

(3) This rule shall not apply to the supply of transcripts of any proceedings or part of proceedings.

### *Service of documents*

10.—(1) For the purpose of these Rules service of a document on the offender may be effected—

- (a) in the case of a document to be served on a body corporate by delivering it to the secretary or clerk of the body at its registered or principal office or sending it by post addressed to the secretary or clerk of the body at that office; and
- (b) in the case of a document to be served on an offender who is in custody, by delivering it to the person having custody of him;
- (c) in the case of a document to be served on any other person—
  - (i) by delivering it to the person to whom it is directed;
  - (ii) by leaving it for him with some person at his last known or usual place of abode; or
  - (iii) by sending it by post addressed to him at his last known or usual place of abode.

(2) For the purpose of these Rules, service of a document on the Master may be effected—

- (a) in the case of an offender who is in custody, by delivering it to the person having custody of him;
- (b) by delivering it to the Master;
- (c) by addressing it to him and leaving it at his office in the Royal Courts of Justice, Chichester Street, Belfast;
- (d) by sending it by post addressed to him at the said office.

(3) A person having custody of an offender to whom a document is delivered in pursuance of paragraph (2)(a) above shall endorse on it the date of delivery and cause it to be forwarded to the Master.

Dated 12th January 1989.

*Brian Hutton  
Donald Murray  
R. D. Carswell  
Owen Catchpole  
John MacDermott  
J. P. Higgins  
Brian Kerr  
Aidan A. Canavan*

I concur,  
Dated 3rd February 1989

*Mackay of Clashfern, C.*

#### EXPLANATORY NOTE

*(This note is not part of the Rules.)*

These Rules make procedural provision for the Attorney General to exercise his power of referring to the Court of Appeal cases where it appears to him that the sentencing of an offender in the Crown Court for an offence punishable only on conviction on indictment has been unduly lenient. Under Part IV of the Criminal Justice Act 1988 the Court of Appeal has power to review, and alter, the sentencing on any such reference.